

October 21, 2004 (3:45PM)

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION****OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF****BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of

Docket No. 70-3103

Louisiana Energy Services, L.P.
National Enrichment Facility

ASLBP No. 04-826-01-ML

**MOTION TO COMPEL DISCOVERY
CONCERNING NEED FOR THE NATIONAL ENRICHMENT FACILITY
ON BEHALF OF PETITIONERS
NUCLEAR INFORMATION AND RESOURCE SERVICE
AND PUBLIC CITIZEN****Preliminary statement**

This Motion is filed on behalf of Petitioners Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") pursuant to the Order of the Atomic Safety and Licensing Board (the "Board"), authorizing the filing of motions related to the discovery obligations of the parties (Memorandum and Order, Aug. 16, 2004, at 5 note 3). Counsel have conferred without resolving their differences as to the requests in issue.

By this motion NIRS/PC seek an order requiring the Applicant, Louisiana Energy Services, L.P. ("LES"), to produce documents requested by NIRS/PC in its interrogatories and document request dated September 23, 2004. In its Objections and Responses dated October 12, 2004, LES has declined to produce several relevant items that are needed for the hearing of contentions admitted by the Board.

Argument

The Board stated in its ruling dated October 20, 2004, that, under contention EC-7/TC-4, it would hear evidence on whether there is a shortfall in enrichment capacity as claimed by LES, and whether LES can effectively enter the market for enrichment in the face of existing and anticipated competitors. The Board stated a desire to forego examination of the profitability and business success of the proposed National Enrichment Facility ("NEF"). (Memorandum and Order, Oct. 20, 2004, at 18). The Board stated, however, that it is appropriate to seek discovery about "supporting components of the LES claim in section 1.1 of its December 31, 2003 environmental report (ER) that there potentially is a 'need' for its uranium enrichment capacity that will support its entry into the market." (Memorandum and Order, Oct. 20, 2004, at 2).

Under that ruling, NIRS/PC seek a direction from the Board requiring that LES produce the documents called for by the following requests:

Document request 17. Please provide documentation of the current annual output levels of Urenco's European enrichment facilities, including but not limited to those at Gronau, Almelo, and Capenhurst.

LES objects to this request on the ground that the documents are irrelevant and it falls outside the scope of any admitted contention. However, the request relates to whether there is a shortage of enrichment capacity "as LES asserts." (Memorandum and Order, Oct. 21, 2004, at 18). In the application, LES refers to the current capability of the European Urenco facilities (App., Rev. 2, ER at 1.1.3) and projects a short term increase to 8.0 million SWU per year (id. 1.1-9; Table 1.1-5). Since LES is asserting that such is the capacity of the European plants, it should be able to provide documentation of the output levels. The information is clearly pertinent to the question of shortage, admitted by the Board.

Document request 22. Please refer to ER p.1.1-1, paragraph 1 ("The enriched uranium will be used primarily in . . ."). Please provide documentation showing the planned sales

of the product of the proposed plant outside the United States as forecasted for each year of the plant's operating life.

LES objects that this request seeks irrelevant matter, since LES claims that the need for the NEF exists in the United States. But LES says in the cited passage of the ER that enriched uranium will go to the United States—"primarily"—but not exclusively. (ER 1.1-1). LES's justification for the NEF would be undercut, if LES were planning significant exports. The documents go to the question of shortage, which has been admitted by the Board. Further, it would tend to show that LES doubts its ability to enter the market in the face of existing competitors, if LES in fact plans to make significant export sales.

Document request 24. Please refer to ER p.1.1-3 paragraph beginning "Notwithstanding . . .". Please provide documentation of the claim that the Urenco centrifuge technology uses "approximately 50 times less energy" than the gas diffusion technology currently in use in the U.S.

Document request 25. Please refer to ER p.1.1-3 paragraph beginning "Notwithstanding . . .". Please provide documentation showing the cost of the energy used by the GDP plant at Paducah compared to the cost of the energy to be used at the Lea County facility.

LES objects to these requests as irrelevant and outside the scope of the contentions.

However, LES clearly claims in its ER that the NEF will fill a need because its technology is superior to that currently in use and has lower costs. LES states, supporting its claim of need: "The reliability and economics of the Urenco-owned centrifuge technology to be deployed in the NEF are well-established. . . . The advantages of the Urenco-owned centrifuge technology relative to other extant enrichment technologies are discussed further in ER Section 2.1.3.1, Alternative Technologies. Chief among these is that the Urenco centrifuge enrichment process requirements approximately 50 times less energy than the gaseous diffusion processes still in use in France and the U.S." (ER 1.1-3). Since LES explicitly claims that the NEF plant is needed *on these grounds*, LES should be required to produce the documents relevant to that claim.

Document request 26. Please provide documentation showing the estimated cost of production of the Lea County facility relative to the estimated cost of production at the proposed USEC centrifuge facility at Portsmouth, Ohio; such costs to include the cost of disposing of each plant's waste products.

LES objects to this request on the ground that it is irrelevant and falls outside the scope of the contentions. However, it is an issue whether "LES can effectively enter the market in the face of existing and anticipated competitors." (Memorandum and Order, Oct. 20, 2004, at 18). On this point, LES has claimed that the preferred scenario is one in which both the NEF and a new USEC centrifuge facility are built in the United States, and that such scenario would fulfill the need for enrichment supply: "This scenario would result in the establishment of two long term sources of energy efficient, low cost, reliable uranium enrichment services in the U.S., which is positive with respect to the security of supply objective." (ER 1.1-19). Thus, LES says that the NEF and the USEC plant would both be low-cost plants, that both would participate in long term enrichment supply, and that the participation of both plants would meet the need for enrichment capacity. LES itself bases such claims on the costs at both facilities; therefore, the cost issue has been introduced by LES. Since the documents bear upon *LES' own claim*, those documents should be produced.

Conclusion

In moving for further disclosure, NIRS/PC have narrowed their request down to the few items considered necessary for presentation of this case. There is an issue whether the NEF will find a place as an efficient domestic producer of enrichment services. The purpose the hearing is to ensure that the environmental analysis of the proposal presents a full understanding of the likely benefits, and detriments, of constructing the NEF. NIRS/PC submit that the documents sought by this motion concern "supporting components of the LES claim in section 1.1 of its December 31, 2003 environmental report (ER) that there potentially is a 'need' for its uranium

enrichment capacity that will support its entry into the market." (Memorandum and Order, Oct. 20, 2004, at 2). The Board has ruled that such information is discoverable. NIRS/PC submit that the documents requested above should be produced.

Respectfully submitted,



Lindsay A. Lovejoy, Jr.
618 Paseo de Peralta, Unit B
Santa Fe, NM 87501
(505) 983-1800
(505) 983-0036 (facsimile)
E-mail: lindsay@lindsaylovejoy.com

Counsel for Petitioners
Nuclear Information and Resource Service
1424 16th St., N.W. Suite 404
Washington, D.C. 20036
(202) 328-0002

and

Public Citizen
1600 20th St., N.W.
Washington, D.C. 20009
(202) 588-1000

October 21, 2004

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on October 21, 2004, the foregoing Motion to Compel Discovery Concerning Need for the National Enrichment Facility on behalf of Petitioners Nuclear Information and Resource Service and Public Citizen was served by electronic mail and by first class mail upon the following:

G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: gpb@nrc.gov

Dr. Paul B. Abramson
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: pba@nrc.gov

Dr. Charles N. Kelber
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: cnk@nrc.gov

James Curtiss, Esq.
David A. Repka, Esq.
Winston & Strawn
1400 L St.
Washington, D.C. 20005-3502
e-mail: jcurtiss@winston.com
drepka@winston.com
moneill@winston.com

John W. Lawrence
Louisiana Energy Services, L.P.
2600 Virginia Ave., N.W.
Suite 610
Washington, D.C. 20037
e-mail: jlawrence@nefnm.com

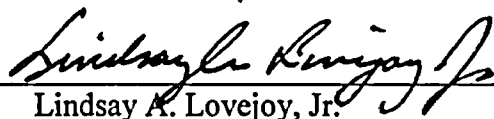
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Associate General Counsel for Hearings, Enforcement, and Administration
e-mail: OGCMailCenter@nrc.gov
lbc@nrc.gov
abc1@nrc.gov

Office of Commission Appellate Adjudication
Mail Stop O-16C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Tannis L. Fox, Esq.
Deputy General Counsel
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-1031
e-mail: tannis_fox@nmenv.state.nm.us

Glenn R. Smith, Esq.
Christopher D. Coppin, Esq.
Stephen R. Farris, Esq.
David M. Pato, Esq.
Assistant Attorneys General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
e-mail: ccoppin@ago.state.nm.us
dpato@ago.state.nm.us
gsmith@ago.state.nm.us
sfarris@ago.state.nm.us

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications Staff (original and two copies)
e-mail: hearingdocket@nrc.gov



Lindsay A. Lovejoy, Jr.
618 Paseo de Peralta, Unit B
Santa Fe, NM 87501
(505) 983-1800
(505) 983-0036 (facsimile)
e-mail: lindsay@lindsaylovejoy.com